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Supreme Court of the United States.

OCTOBER TERM, 1973.

No. 73-1191

JOSEPH M. HOURIHAN,
PETITIONER,

v.

HAROLD DAKIN ET AL.,
RESPONDENTS.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit.

JOSEPH M. HOURIHAN, PRO SE,
10 Westerly Street,
Boston, Massachusetts 02130.
(617) 524-2496

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Supreme Court of the United States.

No.

JOSEPH M. HOURIHAN,
PETITIONER,
v.
HAROLD DAKIN ET AL.,
RESPONDENTS.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit.

The petitioner, Joseph M. Hourihan, respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered in this proceeding on October 16, 1973.

Opinion Below.

The opinion of the Court of Appeals appears in the Appendix hereto.

Jurisdiction.

The jurisdiction of the District Court and the Appeals Court is cited below.
Jurisdiction of this Court is invoked under 28 U.S.C.A. § 1253, annotation 4, appeal as of right; § 1254, anno. 1,

by writ of certiorari; annot. 4, power of court; annot. 27, power of discretion of court; annot. 3, decisions reviewable —generally; § 2101(c), Supreme Court time for appeal of certiorari, docketing, stay; § 2106, annot. 5, power of court; annot. 8, argument of appeal; annot. 9, change in law or facts.

Questions Presented.

1. Did the District Court and the Court of Appeals have jurisdiction of the subject matter of this case?

2. Does the Complaint state a cause of action?

Statement of the Case.

On November 17, 1971, I filed a religious discrimination complaint with the Boston Naval Shipyard. On page 2 I stated jurisdiction to sue in this Court being invoked under 28 U.S.C. § 1331, 1343, (3 and 4); 1391 (e), to recover damages in excess of $10,000. and on page 3 and 9, I also invoked Executive Order 11478.

On page 1 in my Declaration in Opposition of the Motion to dismiss, filed on April 23, 1973, I stated the Court's jurisdiction under 28 U.S.C. § 1391 (b), 1331, 1343 (3 and 4), 1391 (g and e); and Title VII, Acts of 1964.

I filed a motion of appeal on August 7, 1973, paragraph (4), and prayed the Court to permit me to strike Title VII Act of 1964, from my pleadings.

In regard to Mr. Segal's Defendants' Answer #17 my rebuttal is contained in my brief of September 11, 1973, page 6, paragraph (1). This charge I had made at the start of the investigation I was granted, my charge went unchallenged.

I had proven invidious discrimination against me—that was reason for my religious discrimination complaint to be

accepted and processed by the Administration. I will rely on the facts as stated in my appeal until oral argument, if granted, to furnish details.

My appeal started when I appealed an ineligible rate I was issued for the position in Nevada. The procedure used to review the ineligible rate by the Nevada Depot was discriminatory, unjust, and illegal. Hence the ineligible rate was was upheld.

I was notified by Nevada I must now appeal the ineligible rate as a discrimination complaint at the Boston Naval Shipyard. My case hereby became unique because Mr. Dakin, the pivotal figure in my appeal, remained adamant he had no part in the ineligible rate. Why then did he accept my appeal? In my brief filed on September 11, 1973, conclusion page 18. I will await oral argument, if granted, to render further details.

After Senator Brooke entered my case, my appeal was accepted as a timely complaint by a letter from Mr. DiPasquale on January 27, 1970. Senator Brooke in a letter to me dated June 11, 1970, informs me my administrative means are exhausted and he is unable to offer me any further assistance, this is an untrue statement—my brief page 5, paragraph 3, 4, and 5.

On February 5, 1971, Mr. William P. Berzak informs me my complaint based on religion is accepted as a timely complaint. This same complaint I filed on July 7, 1969, is accepted as timely. Therefore, my complaint is accepted and denied three times as a timely complaint. Whatever happened to my speedy trial? Am I denied due process? These questions went unanswered.

In regard to #82, Defendants' Answer, this is explained briefly in my brief of September 11, 1973, page 4, paragraphs (3 and 4). I will await oral argument to point out the discrepancies in the rest of these answers.

Mr. Hurley was the staffing specialist from the Portsmouth Naval Shipyard, the investigator of my appeal. The pages concerning the overtime denial of my appeal are conveniently missing from Mr. Segal's exhibits. However, on page 6, paragraphs 7 and 10 of said report, this investigator does readily admit I was denied three overtime days. The reason given by my supervisor in his opinion was I was not needed on the job. This fact was also stated in my brief of September 11, 1973, pages (3 and 4), paragraphs 5 through 8. I had also explained these facts in my motion of June 4, 1973, on page 4 through 6, again in my motion of June 11, 1973. The charge went unchallenged.

The ineligible rate I had received for the position in Nevada could never be justified. Had the government at the onset admitted this, the ensuing fiasco would never have been necessary and many thousands of dollars would not have been squandered to defeat me. The government next caused my appeals to include an appeal for my failure to be permitted to register in the overseas employment program for any other rate except that of General Foreman Engineman. My appeal then included an appeal for being punished by being denied my fair share of overtime work.

I filed a motion to remove Judge Tauro from my case on May 21, 1973, and the motion was granted on May 21, 1973, in the brief I filed on September 11, 1973, page 15, paragraphs (3 and 4). I don't think the Court should have permitted these charges to go unanswered. I will await oral argument to present more details. Appendix p. .

Senator Brooke formed a cabal when he sent one of the letters I sent him to Captain Burk who in turn forwarded my letter to Deputy Gundlach of the office of Civilian Manpower Management (O.C.M.M.) in Washington, D.C. Deputy Gundlach quoted a part of a paragraph in my letter and because the word "Nevada" was not included, my appeal was denied and is unappealable.

It is shocking to me to read the memorandum and order of October 16, 1973, wherein it states:

> "the complaint in this case contains nothing but the most conclusory of charges" Appendix p.

Anyone, much less an appeals court, to make such a ridiculous charge after admitting they had read my complaint and still refused to grant me any relief under any applicable law as I prayed in my complaint (page 23). The decisions rendered are a gross miscarriage of justice that can only be corrected by the issuance of the writ I pray for.

I doubt if there has ever been another decision rendered by Deputy Gundlach before or since my case for such an idiotic reason. This also referenced in my brief, page 11, paragraph (3).

In my brief of September 11, 1973 (pages 3 and 4), I believe I did prove my case, yet the Court ignored these facts.

Before Judge Garrity had rendered his decision, I filed a motion on June 11, 1973, and my brief filed on September 11, 1973, on pages 7 and 8, paragraph (3). I don't think Mr. Segal should have ignored my charge. Also in my brief, page 11 (4), this case I brought to the court's attention in hopes I could have received a like treatment. The letter I had sent to the General Accounting Office on March 17, 1971, and the denial of any assistance to me is a most lengthy exhibit. I will await oral argument to present same.

Regardless of facts presented, Judge Garrity's order of dismissal July 27, 1973, stated opposing memorandum was considered. How the Judge after reading my appeal could ever admit he had read any opposing memorandum and still erroneously dismiss my appeal, page 9, paragraph (1), is to admit the decision to dismiss is a knowingly erroneous decision. My brief, page 14, paragraphs (1 and 2), the Judge had jurisdiction if for only the cause as stated herein. To

remain adamant to dismiss my appeal the erroneous decision is now a gross miscarriage of justice.

In my motion June 10, 1973, I thought I had proven the Court's jurisdiction; in my motion on April 23, 1973 pages 4 through 7, my reasons for being forced to proceed Pro Se; in my brief, pages 6 and 7, paragraphs 2, 3, and 4, I again explained my reason.

I received a motion for summary disposition on September 21, 1973, because it stated my appeal clearly presents no substantial question. My motion to deny, September 28, 1973. The substantial question was, why did Mr. Gabriel abandon the charge of lack of jurisdiction and my failure to state a claim for relief? Also why did he fail to state executive order for dismissal? My motion to proceed upon original papers on August 15, 1973, was granted on August 15, 1973. This is the only motion I filed that was ever acknowledged. I received memorandum and order from the Appeals Court on October 16, 1973. The *Gnotta* v. *United States* case is referenced as grounds to deny my appeal because I imagine I had erroneously stated Executive Order 11478. In my brief, pages 8 and 9, paragraphs 2 through 6, contain my rebuttal to this *Gnotta* case. I made a plea to the Court for mercy for mistakes I was sure to make in my Declaration in Opposition, April 23, 1973, page 2, paragraph 5. This plea is also denied. The memorandum stated:

> "such cannot suffice . . . even with the indulgence granted a pro se litigant."

I was never at any time granted any indulgence from any Boston Court.

In my motion, April 23, 1973, page 3, paragraph 5, herein I point out this Court did show compassion on a complainant because she was pro se. In my brief, page 10, paragraph 1, again I ask for the Court's compassion to no avail. In my

brief page 7, paragraph 3, I believe Mr. Segal should not have permitted my charge to go unchallenged.

Mr. Segal and Mr. Gabriel had displayed a most belligerent attitude toward me. In my brief page 16, paragraph (1). Here, I believe, Mr. Segal should have forced me to prove this charge was true. When Mr. Segal remained silent I think he readily admits my charge is true. In my motion to remove Judge Tauro, May 21, 1973, also went unchallenged.

Mr. Gabriel presented a case to this Court that concerns a squatter's case to 103.2 acres of prime land in Truro, Massachusetts. The claim is against the Government. Mr. Gabriel offers no opposition whatsoever. The man will collect $200,000.00 from the U.S. Parks Department. There can be no doubt Mr. Gabriel spent more of his time and energy to defeat my Civil Rights case than this other case. The case is included in cases on page A.

Senator Brooke sent me his alibi on June 11, 1970. The reason stated is not true. My appeal was again accepted on February 5, 1971. Yet the fact the Senator had stated if there was a way he could help me he would. I submit another case that was heard in Washington in which Senator Brooke did intercede.

I submit another case heard in a Washington Court where a convicted murderer was freed because he was a product of the ghetto of the District of Columbia. I am a product of the ghetto of Roxbury for over fifty years. Senator Brooke's assistance simply intensified my anxieties and frustrations. The case is filed under cases attached hereto.

Reasons for Granting the Writ.

The U.S. Attorney, James N. Gabriel, filed a motion to dismiss on the ground the Court lacks jurisdiction over the

subject matter and the complaint fails to state a claim upon which relief can be granted. In the memorandum in Support of Defendants Motion to Dismiss, on page 2, quotes the damages I sought. Therefore a writ should be issued to review decisions on the issue because of doubt as to the correctness of the facts with a conflict of decisions.

Judge Tauro at the pre-trial hearing on the motion to dismiss, after listening to a long drawnout discussion by Mr. Segal's erroneous reasons to dismiss my appeal. Judge Tauro announced from the bench he had decided to hear my case as Summary Judgment. I filed a motion to remove Judge Tauro on May 21, 1973, included in my brief, page 14, paragraph 3.

I had made a rash decision to cause Judge Tauro's removal. I was issued Judge Garrity's order of dismissal on July 27, 1973. A writ should be issued to ascertain Mr. Segal's unorthodox procedures.

Mr. Gabriel's motion pursuant to Rule 6 of the rules of this Court to dismiss the appeal and affirm the judgment below on the grounds that the appeal clearly presents no substantial question, because there now exists yet another different decision, a writ should be issued to review decisions on the issue because of doubt as to their correctness of facts.

In my motion to deny Motion for Summary Disposition filed on September 28, 1973, I corrected Mr. Gabriel's legal mistake. It is now Rule 6, rather than Rule 12, he should have invoked. This legal mistake has a tremendous effect on my appeal that was denied because I had invoked Executive Order 11478. Mr. Gabriel gets away with legal errors while I am held strictly accountable for my mistake. The rest of the facts stated in my motion I will await oral argument for further discussion. A writ should be issued to correct an erroneous ruling on the particular facts. My

brief, page 10, paragraph (1), I had appealed an erroneous decision from the District Court. In the memorandum Mr. Segal stated:

> "an extensive administrative review revealed no basis for plaintiff's complaint."

This is a downright despicable lie. My brief, pages 3 and 4, paragraphs 2 through 6.

Yet Judge Garrity cites simply the *Gnotta* case to justify his denial of my appeal. The one glaring example of difference between Gnotta's case is he filed an administrative complaint. When Mr. Segal stated in his memorandum, on page 1, that I too filed an administrative complaint this is yet another lie. My brief, pages 7 and 8, paragraphs 3 and 4. The erroneous decision of Mr. Segal's represents a gross miscarriage of justice. A writ will have to be issued to correct this decision because it is unduly harsh in its impact to prevent the administrative of Civil Justice.

All the argument presented in the memorandum while relevant to Gnotta's administrative complaint because of the administrative orders he invoked. Such is not true in my case. The laws I invoked in conjunction with the executive order I had erroneously quoted make the long memorandum most irrelevant to my case. The fact the Civil Service Commission Board of Appeals and Review upheld the discrimination against me. I will wait oral argument to prove how utterly ridiculous was the upholding of the discriminatory decisions against me. In my brief, page 4, paragraph 1, was my opinion of the investigations of my appeal. In my brief, pages 7 and 8, paragraphs 3 and 4, Mr. Segal never answered the charges I had made against him. On page 9, I think a legal problem developed here between Judge Tauro's decision for Summary Judgment and Judge Garrity taking it upon himself also to announce

from the bench he would not hear my case as Summary Judgment. Judge Garrity's reply to my question is also questionable. I believe a writ should be issued to bring about a uniformity of decisions in the Lower Court.

A conflict also exists between Judge Tauro's decision and the Court of Appeals' decision. The Appeals Court failed to use its supervisory powers to review the Lower Court's erroneous decision.

I was also thereby denied my constitutional rights to a fair trial because the decision is final without the Supreme Court's intervention. Therefore, a writ should be issued because the decision below is shockingly wrong and thus presents substantial due process questions.

The motion I filed on May 29, 1973, and also explained in my brief, page 15, paragraph 2, this is discrimination of a continuing nature.

The *Gnotta* case is also explained briefly in my brief, pages 9 and 10, paragraph 3. I will rely on the facts stated in my brief until oral argument if granted. On page 1275, paragraph 2, Gnotta's argument would not be relevant to my case because I did invoke other pertinent laws and therefore the Federal Court could have fashioned an appropriate and effective remedy.

Gnotta was represented by counsel. Yet based on his unproven claim of discrimination, Gnotta was granted a fair trial. There does exist a conflict of decisions between this case and my case. A writ should be issued to insure uniformity of decisions.

On page 1275, paragraph 4 the Court does show compassion for Gnotta irrespective of the fact he is represented by counsel and in paragraph 6, points out errors in Gnotta's appeal. There was no Court that could point any errors in my appeal except the Executive Order I had erroneously invoked. And then the Court dismissed my appeal for one

legal mistake. There does exist a conflict of decision between the Court for *Gnotta* and the Court here.

On page 1276, paragraphs 4 and 5, the Court proves to Gnotta's satisfaction substantial evidence to support the agency's decision. There does exist a conflict of decisions here, not only in the decisions of the Courts but also the decisions between the agencies. I was never shown or proven where I am wrong.

On page 1278, paragraphs 4 and 5, the Court informs Gnotta of laws he should have invoked, 28 U.S.C. 1343 (4). I invoked this law and section and also section 1343 (3). Regardless of laws I had invoked, the fact the Court pointed out further errors in Gnotta's appeal; again a conflict of decisions exists as well as proof the decision to deny my appeal is erroneous at best.

In my application for Court Order, May 29, 1973, the Court had felt compassion because Gnotta was in fact bucking the establishment (page 1275, paragraph 4). I don't think Gnotta was ever discriminated against for such a long period of time as I was. In my brief, page 17, it is most doubtful Gnotta was also so discriminated against by the Court and by the agency. Again a conflict of decisions exists and I had never been shown any compassion whatsoever. My motion, October 5, 1973 is also discrimination against me.

The motion I filed on June 4, 1973, on page 3, paragraph 4, I state facts to prove fraud against the government. My motion of June 11, 1973, I plead to dismiss my appeal, fraud will have been a success if my appeal is denied. In my brief, pages 4 and 5, paragraphs 3 through 7, writ should be issued to ascertain Mr. Gabriel's reason to permit fraud against the government to succeed. A conflict of decisions also exists when the lower courts dismissed my appeal and permitted fraud to go unpunished and unduly.

The case stated in 28 U.S.C. 2106, annot. 8, argument of appeal. Could my mistake also be ruled a gross mistake? Why didn't the court examine the entire record to determine if injustice would be done in dismissing my appeal? A writ should be issued because there is a conflict of decisions between the case cited and my case.

When I had informed Judge Garrity I was attempting to appeal the fact the Municipal Judge refused to render an administrative decision thereby denying my case. When I was forbidden to appeal this decision to the Supreme Court I was therefore stating these facts to prove Judge Garrity had jurisdiction because there was no other court I could turn to for justice, when Judge Garrity denied my appeal was to punish the innocent. I had informed Judge Garrity at his pre-trial hearing of the facts as stated in my brief, pages 6 and 7, paragraphs 2 through 6. Evidently the facts I presented failed to sway Judge Garrity from his erroneous decision. A writ should be issued to review if the denial of my appeal was judicially correct on the particular facts.

The refund I received from the District Court of November, 1973, presents a question that had I not appealed to this Court would I then have received this refund? Was the procedure judicially correct to wait until November, 1973, to receive my refund? A writ should be issued to ascertain the procedure from the District Court.

Conclusion.

I pray this Court to grant me a writ of certiorari because I have been punished enough. I have endured discrimination due to lies and deceptions by the government. All the hearings and investigations I was afforded the results produced can be termed irony in its purest form. To bring

my case to this Court has been slow and very painful to me; according to the laws this is the irony.

Mr. Dakin the pivotal figure in my complaint and the crowd that filled the shadows around him were the ultimate abusers of power. The aim of the government was not just to defeat me but in sending mental and legal giants as opponents was to destroy me by any available scheme.

There has never before been a case brought before this Court where an innocent victim was subjected to invidious discrimination for sixteen years. I had been denied my civil rights, due process, and equal rights and privileges when I have never been considered for any overseas position for any country in the world for the past ten or more years.

The motion I had filed on May 29, 1973, the facts herein stated can only be explained as continuing discrimination of me. As the ineligible rate issued to deny me the right to compete for the position in Nevada. There is no way the additional defendants named herein can anyway possible justify the mark given my application in view of the circumstances.

To deny me a writ will have denied me my life's ambition. I will never be permitted to transfer or seek any promotion from this shipyard and my Navy career will end here in the immediate future. My motions of May 29, 1973, and October 5, 1973, also prove a continuing discrimination of me. My supervisors denied me my civil rights as punishment for having named them in my complaint.

Therefore the petitioner, Joseph M. Hourihan, prays that a writ of certiorari be issued to review the unjust and most unreasonable decision of the Municipal, District and Court of Appeals in view of the apparent harshness of the results entailed is an obvious miscarriage of justcie and also denied me Due Process. The Appeals Court decision to dis-

miss my appeal for the reason stated has so far departed from the accepted and usual course of judicial proceedings and so far sanctioned such a course by the lower court that it calls for an exercise of this court's power of supervision to set the Court below right. For these reason a writ of certiorari should be issued to review the judgment and opinion of the First Circuit.

Respectfully submitted,

JOSEPH M. HOURIHAN, Pro Se.

APPENDIX.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOSEPH M. HOURIHAN
v. Civil Action No. 72-3515-T
HAROLD DAKIN, ET AL.

Disqualification
May 21, 1973

TAURO, D. J.

I have reviewed the plaintiff's pro se affidavit requesting that I disqualify myself. The record will demonstrate that plaintiff's conclusions and impressions as to my objectivity are totally without foundation or merit. Having in mind, however, that plaintiff appears pro se, I grant his request that I take no further action in this matter and hereby request the Clerk to have this matter redrawn to another judge.

JOSEPH L. TAURO,
United States District Judge.

Case redrawn to Judge Garrity.
Docket Number is now 72-3515-G.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOSEPH M. HOURIHAN, Plaintiff, CIVIL ACTION
v. No. 72-3515-G
HAROLD DAKIN ET AL., Defendants.

Order of Dismissal
July 27, 1973

GARRITY, J. After hearing and upon consideration of supporting and opposing memoranda filed by the parties,

it is ordered that defendants' motion to dismiss filed April 10, 1973 be allowed and that the case be dismissed for lack of jurisdiction over the subject matter, under principles stated in *Gnotta* v. *United States*, 8 Cir. 1969, 415 F. 2d 1271, *cert. den.* 397 U.S. 934.

W. ARTHUR GARRITY, JR.,
United States District Judge.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 73-1274.

JOSEPH M. HOURIHAN,
Plaintiff, Appellant,
v.
HAROLD DAKIN ET AL.,
Defendants, Appellees.

Order of Court

Entered: August 15, 1973

Upon motion,

Leave is hereby granted to the parties to proceed upon the original papers of the District Court without reproduction thereof in appendix form; and further,

Leave is hereby granted appellant to proceed upon four (4) reproduced copies of his brief with proof of service of one copy on counsel for the appellees.

By the Court:
DANA H. GALLUP, Clerk
By: FRANCIS P. SCIGLIANO,
Chief Deputy Clerk.

[cc: Mr. Hourihan and Mr. Gabriel.]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 73-1274.

JOSEPH M. HOURIHAN,
Plaintiff, Appellant,
v.
HAROLD DAKIN ET AL.,
Defendants, Appellees.

Before COFFIN, Chief Judge,
McENTEE AND CAMPBELL, Circuit Judges.

Memorandum and Order

Entered: October 16, 1973

Plaintiff, in a complaint containing 115 paragraphs, has challenged various adverse personnel actions or refusals to act on the part of officials of the Navy, his employer, and other government officials, twenty-six in all. The district court dismissed the complaint for lack of jurisdiction over the subject matter, citing *Gnotta* v. *United States*, 415 F. 2d 1271 (8th Cir.), *cert. denied*, 397 U.S. 934 (1969). Even if sovereign immunity might not be held a complete defense against detailed allegations of discrimination on religious grounds—a point not necessary to decide—the complaint in this case contains but the most conclusory of charges. Such cannot suffice, even with the indulgence granted a pro se litigant.

The judgment of the district court is affirmed under our rule 12.

By the Court:
/s/ DANA H. GALLUP
Clerk.

[cc: Messrs. Hourihan and Segal.]

SUPREME COURT, U. S.

FILED

MAR. 22 1974

MICHAEL RODAK, JR., CLERK

No. 73-1191

In the Supreme Court of the United States

OCTOBER TERM, 1973

JOSEPH M. HOURIHAN, PETITIONER

v.

HAROLD DAKIN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1191

JOSEPH M. HOURIHAN, PETITIONER

v.

HAROLD DAKIN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

We invite the Court's attention to the following facts which demonstrate that the petition for a writ of certiorari was filed out of time. The judgment of the court of appeals (Pet. App. 17) was entered on October 16, 1973. The time for filing a petition for a writ of certiorari was not extended, and, accordingly, the 90-day period provided by 28 U.S.C. 2101(c) for petitioning in civil cases expired on January 14, 1974. The petition was filed on February 4, 1974.

Since the time limit specified by 28 U.S.C. 2101(c) is jurisdictional, the petition should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

MARCH 1974.

DOJ-1974-03

MAR 28 1974

Supreme Court of the United States.

OCTOBER TERM, 1973.

No. 73-1191.

JOSEPH M. HOURIHAN,
PETITIONER,

v.

HAROLD DAKIN ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Petitioner's Reply to Brief in Opposition.

JOSEPH M. HOURIHAN, PRO SE,
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Supreme Court of the United States.

OCTOBER TERM, 1973.

No. 73 - 1191.

JOSEPH M. HOURIHAN,
PETITIONER,
v.
HAROLD DAKIN ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Petitioner's Reply to Brief in Opposition.

I pray this Court to grant me my Constitutional Rights to a trial because I was denied a trial by the Courts in Massachusetts.

As I have stated in my appeal I am forced to be author of my complaint, solely because I am unable to receive any help from any source whatsoever.

Since I am pro se, I pray this Court to grant me a trial and permit me to prove at oral argument I have been an innocent victim of invidious discrimination for a period of time in excess of twenty years.

I filed a writ for certiorari on November 27, 1973. It was returned to me by letter from Mr. Edward C. Schade on November 30, 1973, in which it states, "I am enclosing a

sample typewritten petition for writ of certiorari." My petition for the writ did conform to said Rule 47 quoted by Mr. Schade.

The letter from Mr. Schade continues, "The specific reasons for the return of your application for writ of habeas corpus addressed to Mr. Justice Brennan can be found in Rule 31 or Title 28 U.S.C. Section 2242." Rule 31 relates to procedure on application for extraordinary writs.

I fail to understand what relevance Rule 31 had to my writ for certiorari. Or why the writ had been returned.

I had filed a motion with the Court to proceed upon original papers without having to file another brief and an appendix. The motion was answered by a letter from Mr. Edward Schade on November 23, 1973. Said letter states, "I return your application addressed to Mr. Justice Brennan, your attention is directed to Rules 37 and 49 of the enclosed Rules of this Court; also to Rule 47 . . . concerned with the submission of typewritten papers."

Again I was forced to waste most valuable time in researching laws most irrelevant to my case in a law library. Rule 37 quoted by Mr. Schade relates to any record transmitted to this Court shall contain any document, paper, testimony, or other proceeding in a foreign language. Again I fail to see the relevance to my case.

Rule 49 states Custody of Prisoners in Habeas Corpus Proceedings. Once again I fail to see the relevance other than to cause me needless waste of valuable time in research.

Rule 47 relates to form of typewritten papers, Mr. Schade gave me a false impression by quoting Rule 47. When in his letter to me dated November 30, 1973, Mr. Schade enclosed a typewritten petition for certiorari. I filed my typewritten petition for certiorari on December 11, 1973. It was more readable than the sample writ sent to me by Mr. Schade.

My writ could have been accepted and if I was not the author I firmly believe it would have been. Had it been deemed necessary to cut my writ down it could have been done with no disturbance to the typed matter.

I filed a second application to proceed upon the original record. My application was again denied by a letter from Mr. Schade on December 4, 1973. The confusion herein was caused by Mr. Schade refusing to inform me the first instance as to what the reason was for the denial.

I was of the opinion when I had filed two defective timely writs for certiorari. The fact they were filed as timely would be sufficient reason for the Court to grant my writ. When the Court returned my writ on November 30, 1973, it had taken thirteen days for this letter to reach me. It had been sent air-mail. I should not be penalized by having my writ denied because of the timely factor.

In accordance with Supreme Court Practice Sec. 67(h) I hereby submit the following facts to pray this Court to grant my writ.

I did engage the Thayer Dearing Company of 354 Congress Street, Boston, Mass. Mr. Dable had after a long interview with me on the merits of my case agreed to print it. He had assured me over a period of twelve days the writ was almost printed. One day I went to the company and the office manager informed me the company lawyer stated this court would throw my writ out if I did not eliminate the case number and also pages 3, 4, 5, and 6 of my writ. I of course refused and then the writ was given back to me.

Next I engaged Buck Printing Company of 145 Ipswich Street, Boston, Mass. Mr. John Longo also had me explain the merits of my case. He requested a $100.00 retainer fee and he agreed to print my writ. After two weeks I had made numerous phone calls to Mr. Longo, he kept

giving me false promises as to the fact my writ was almost completed. I went one day to ascertain how much actually he had printed, to my dismay the production manager, Mr. James Cavanaugh, informed me the company was going to retype my writ. Then I would have to pay for the typing at sixteen dollars a page and then I would have to find a printer that would print it for me. I informed Mr. Cavanaugh I thought he was stalling me so I would miss the deadline for filing the writ. I informed him if such was the case I would make mention of this fact in my motion to this Court.

Therefore, I do not think the fact these two printers caused me to waste much of my valuable time by a conspiracy to bring about the final denial of the writ should work to deny me a trial.

The Solicitor General I do not believe has the right to attempt to deny me my writ even if what he states is true as to my writ being filed as untimely. Rule 24(1) of this Court states the respondent shall have thirty days after receipt of the petition within which to file his opposing brief. Since I was never notified the time limit had been enlarged by the Court, I fail to understand why the clerk has permitted the Solicitor General to file his memorandum in forty-five days.

In accordance with Rule 24.3, I fail to see why this procedure was not followed in my case at the expiration of the thirty days. I have been existing in a fool's paradise ever since the thirty days elapsed. I must become immune to turn-down after turn-down by the Courts. It is apparent to me the Solicitor General has grasped the last remaining straw to defeat me. Justice now hinges on my getting my reply to the brief in opposition to the Court within the ten days alloted me by Mr. Rodak, Jr., as a result of my telephone call on Monday, March 25, 1974.

In accordance with Sec. 6.9, I fail to understand why the clerk failed to notify me before docketing my case. At least if this courtesy had been extended me I could have saved myself the cost of printing.

Therefore I once again pray this Court to show compassion to me, by granting me the writ so that I shall not have been denied my Constitutional right to a trial in any Court.

JOSEPH M. HOURIHAN, PRO SE.

JMH/hh

MOTION FILED
SEP 20 1974

Supreme Court of the United States.

OCTOBER TERM, 1973.

No. 73-1191.

JOSEPH M. HOURIHAN,
PETITIONER,

v.

HAROLD DAKIN ET AL.,
RESPONDENTS.

Petition for Rehearing of Order on Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit.

JOSEPH M. HOURIHAN, PRO SE.
10 Westerly Street,
Boston, Massachusetts 02130.
(617) 524-2496

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Petition for Rehearing of Order on Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit.

The petitioner here in respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari entered on April 15, 1974 and (2) granting the petition as grounds for justification for this motion, the petitioner states the following facts. As stated in the newspaper—"The two fold aim of (criminal justice) is that guilt shall not escape or innocence suffer." This is the sum and substance of my case since the beginning. I have been a victim of invidious discrimination for countless times.

In my motion filed with the District Court on June 4, and June 11. This is a fraud against the Government. I acquainted Judge Garrity of this fact at his pretrial hearing. Yet the Court saw fit to permit the guilt to escape punishment rather than permit a trial to prove the charge.

I wrote a letter to the Shipyard Commander on May 12, 1970 because I wished to withdraw this overtime complaint, solely because I could no longer stand the smirking hypocrite I had as an investigator. Yet my request was denied. Here the Commander denied me my Civil Rights when he refused to permit me to withdraw this complaint. But had the mental giants permitted my request I then would never have been permitted to file the complaint on the fraud against the Government.

When I realize Judge Garrity's denial of my appeal for lack of jurisdiction it is a mind, boggling decision. Therefore it is encumbent upon this Court to investigate the reason for Judge Garrity's erroneous decision and the lower court be set aright.

My case is actually another Watergate. The only difference is I am bound to stand alone. I have proved countless lies and contradictions and the whole defense is nothing more than a train of lies. My only fault is all the defendants are high ranking government officials. I have proven in my appeal these giants were insignificant stupid runts as I can prove if granted my writ.

I should never have gone to this added expense of filing this motion simply because nothing I have ever filed with the courts have ever been considered. I am accused of guilt and as such I must remain. Yet when I read in the papers three of the Judges to this Court were appointed to this Court by President Nixon. I believe then that simply because I have named Senator Brooke, a defendant in my

case, will not force a like decision as was rendered in the lower courts.

My case was deliberately made complex by the government. As a result of an extensive administrative revue, I informed Judge Garrity it produced nothing more than a voluminous volume of idiocies. I further charge for any investigator especially one possessed of special qualifications to compose such an idiotic volume he would have to be an idiot. It is also true for any official charged with the responsibility to revue this report when he accepted it as a true copy of the investigation it also follows that he must likewise be an idiot.

I sent the copy I was furnished to Senator Brooke on June 24, 1970. I sent a registered letter to the Senator since he refused me any further assistance to return my correspondence. The Senator obstructed justice when he refused to comply with my request. Senator Brooke also sent me information he was fully aware was not true on June 11, 1970 thereby obstructing justice once again.

Again Senator Brooke obstructed justice when he used his influence to promote a Captain Gundlach to the rate of Deputy. In appreciation there of the Deputy denied my appeal for the position in Nevada for a reason that is idiotic at best. The qualifications for this position I could more than doubly qualify. Yet the ineligible rate remained outstanding.

My appeal was then denied as untimely. A most asinine reason as I proved in my appeal. The pivotal figure in my appeal, Mr. Dakin, Head Employment Branch in the Shipyard, did conspire with Mr. Griffin, an Industrial Relations Specialist, and connived a scheme where in my appeal was denied as untimely. The defendants went unpunished because no court in the land would permit a trial to prove my case.

The unique part of this position in Nevada is I had been invited to compete for this position by written invitation on three separate occasions. One could not fail the written test and had to be rated solely on his experience. I was a twenty-seven year employee of the Navy and thirteen years as a supervisor, therefore, when I was declared ineligible to compete for this position it renderes the decision idiotic.

Since I have been denied my Civil Rights to compete for any position over the past twenty years. The last one was for a position at the Curtis Bay Coast Guard Yard in Maryland when I named the parties to this conspiracy, as additional defendants on May 29, 1973. The ineligible decision I received for this position is also idiotic.

A case I filed with the Courts is Exhibit (Case A). This case was settled most advantageous to the plaintiff. The only statement I resent is when this Mrs. Canty claims if she was white she would have been given the position. In reality it is solely her color that won her this most controversial award.

In Case D this case calls to heaven for justice. Simply because Mr. Hallman, was a large contributor to Senator Brooke's campaign and Mr. Gabriel, the U.S. Attorney was an assistant attorney general for Senator Brooke, this decision was wrong.

The case in rebuttal I wish to state is the case of Indian land refusal laid to Brooke. This case the Indians wanted eighty-six acres of surplus land in Hingham to build a school for all Indians. Yet Al Gammel, the regional administrator in G.S.A. in Boston, who was Brooke's former campaign manager states the reject of the Indian plans was made largely by Senator Brooke. This is yet another decision laid to Brooke that's wrong as did the decision he rendered in my case.

The U.S. Attorney, Mr. Gabriel, and his assistant, Mr. Segal, obstructed justice. In Memorandum in Support

of Defendants Motion to Dismiss states, "Plaintiff, by an Administrative Complaint (marked Exhibit A and attached hereto)". This is a down right despicable lie. I filed a Discrimination Complaint. A fact I got tired of informing the Court to no avail. Mr. Gabriel in his Memorandum also insists I filed an Administrative Complaint.

In Mr. Gabriel's Motion to Dismiss it states "and the Complaint fails to state a claim upon which relief can be granted". Again this is an obstruction of justice as proven by page 2 of Memorandum in Support (2nd paragraph) states Plaintiff seeks damages in excess of $10,000. and an appointment to the first available Group Superintendent position with retroactive back pay.

In Case B I attempted to point out to Judge Garrity here in was a case that was settled without the plaintiff having to go to a Federal Court. Yet the Judge used this to confuse the issue. He ordered Mr. Segal to research this exhibit to ascertain could I appeal to the Civil Service Commission instead of to his Court. This was positively a useless procedure to simply add more useless pounds of administrative revue to the thirty pounds Mr. Segal stated he had at this time.

On November 29, 1972 I filed a Court Order to compel Senator Brooke to once again return my correspondence to me, again, this Court Order was ignored.

It is a fact I filed more applications for promotions and competed in more written examinations than any other employee in the history of the Boston Naval Shipyard. For the past twenty years I was never considered for one position.

Captain Burk, the Shipyard Commander, did institute a program in the Shipyard regardless of qualifications, Negroes were to be given any promotion they sought. As a result of this asinine procedure Senator Brooke promoted

Captain Burk to Admiral. One can realize the utter and complete chaos that would result in a complex shipyard with unqualified personnel. Yet fate saved countless lives because the yard was closed before the plan was fully utilized.

There was yet another Admiral by the name of Zumualt. He also was pro Negro with a program to recruit and promote unqualified Negroes. The result was much more disasterous than Captain Burk's. Admiral Zumualt came closer to running the Navy hard and fast aground than any other individual in the history of the Navy. The evil he had done I know will live after him. He was responsible for the only mutinity in the Navy's history.

Judge Wyzanski here in Boston has also made another decision that only time will prove how utterly disasterous it will be. To recruit policemen regardless of qualifications will also be the same as the two Admirals' idiotic scheme to appease Senator Brooke.

Last month Judge Good of the State Court made it clear that he is not in sympathy with the minority preference decree. He said the U.S. Court of Appeals decision in the case, which substantially upheld Wyzanski was "atrocious". The fact this same Appeals Court upheld Judge Garrity's denial of my appeal is also atrocious. The Judge further stated, they made it by the seat of their pants. And they don't know the seat of their pants from their elbow. Who says they're right? I don't, Good remarked.

There is no doubt in my mind, if I could have presented my case to Judge Good I should have been granted a trial. Of course Judge Tauro was appointed by Senator Brooke. Yet he had stated he was going to hear my case as summary judgment. When I told this to Judge Garrity he stated he was not responsible for what went on in Judge Tauro's Court.

A U.S. Attorney for Maryland, Mr. George Beall said, "To maintain public rectitude, Beall said, "The law must be a sword of Damocles that hangs not over the heads of wrongdoers, but over the heads of those in the professions, business, industry and government who would condone misconduct in others." "Each success in bringing wrongdoers to justice he added marks a victory for good government and we should not despair." Strengthened with the foregoing I will fight on.

As far as the U.S. Attorney obstructing justice and the Judge ignoring my charge. There is a case U.S. District Judge Newell Edenfield in allowing lawyers for William A.H. Williams and his wife Betty Ruth two more weeks to file motions turned to prosecutor William p. Gaffney and said, "I understand they won't even let this man Williams, make a phone call—and he hasn't even got the money to buy a pack of cigarettes". In a rising voice Edenfield shook his finger at the assistant U. S. Attorney and said "We're dealing with a human being. This isn't any fifteenth century government you're dealing with".

How I wonder would Judge Edenfield have reacted to the fact the U.S. Attorney here in Boston obstructed justice. They made written statements to the Court they both are fully aware are lies and through their insistance the Court lacked jurisdiction was cause for my appeal to be denied. Or because I am not a prisoner no do I have any one to plead for me would Judge Edenfield also permit this injustice to prevail against me. Not being a legal scholas yet, I do believe that both attornies are guilty of fraud and false statements section of Title 18 of the United States Criminal Code.

When Senator Brooke sent me a letter on June 11, 1970 in which he states he can not properly intervene in my case. When one examines Case E in the exhibits this also constitutes an untrue statement.

For having named the guilty parties to the conspiracy to defraud the government I was severly punished. I was issued a Reduction in Force that was illegal. It is in direct violation of Veterans Preference. It was a conspiracy to get rid of me to give my position to a fellow Mason as the Group Superintendent whom I believe is a fellow lodge member. Yet the Shipyard Commander did issue a notice the lay off's would be in accordance with Veterans Preference. I applied for a Court Order to stop my Reduction in Force but it was ignored. The sad point of this was there was twelve bridge crane operators also illegally laid off to try and justify my R.I.F. I was contacted by a Mr. Grossman of the Civil Service Commission in reference to the Court Order I filed to block my R.I.F., Mr. Grossman informed me the procedure was legal. But I could file a formal complaint if I chose. This would permit him to conduct another idiotic investigation. The other day I read in the newspaper Mr. Grossman is named Chief Appeals Examiner. There is no doubt in my mind, again Senator Brooke rewarded Mr. Grossman for the idiotic way he insisted my investigation of my appeal be conducted. Of all the employees illegally laid off in the Shipyard I know of no one that received any help whatsoever from Mr. Grossman. Mr. Connolley conducted a hearing on my appeal for the Nevada complaint. To say he conducted an idiotic investigation is to put it mildly.

There was another U.S. District Court Judge by the name of Walter Jay Skinner and recently set aside the conviction of a thirty-one year old Roxbury man despite the fact that the State Supreme Judicial Court declined to hear the case. Skinner set aside the conviction of James Ross, Jr. now serving eighteen to thirty years sentence at Walpole State Prison for armed robbery because the trial Judge refused to ask the jurors whether they had

any racial bias. Judge Skinner said Ross's trial in 1970 before Superior Court Judge Edward F. Hennessey violated the constitutional rights of the defendants.

Ross and two other defendants, Roy Daniels and James Williams were convicted by a jury of ten whites and two blacks.

Here again is a most controversial case. What are my constitutional rights? How could I get Judge Garrity to reconsider my case? It is a fact Judge Skinner was appointed to the Federal bench by Senator Brooke.

Recently Senator Brooke spoke to the businessmen in Boston. He said, "the right to work and profit in our system of enterprise is a right to be shared by all Americans and must be shared equally, he said and unless minorities gain this power they will be virtually impotent in a society whose strength is founded on economic power and political power".

The Senator speaks as a hypocrite. How does he propose the right to work is a right to be shared by all Americans and must be shared equally. When he insists in using his influence illegally to promote unqualified Negroes.

In my case it is a pity when the governmental forces of the defense have no lack of funds and are in a position to bankrupt me even though if granted a trial I would be ultimately acquitted. The only fact that was most painful to me was I don't have any degree. I had to rely on information I obtained from books. When I graduated from high school over forty years ago and I was testifying against legal and mental giants who had degrees and they were continually saying I was wrong.

In yet another case the Nixon administration used the signing of a historic job discrimination settlement with nine major steel companies to serve notice that it will take similar action against other industries. Under Sec-

retary of Labor Richard F. Schubert said that in industries where race and sex discrimination exists we will be knocking on their doors and moving forward against them as we did with AT & T and the steel industry. It is the largest job discrimination settlement in the nations history surpassing the thirty-eight million agreement negotiated last year with the American Telephine & Telegraph Co. A spokesman for the nine steel firms said terms of the agreement entered as a consent degree in U.S. District Court in Birmingham, Alabama, represents an equitable settlement and eliminate the need for protracted litigation. The $30.9 million dollars in back pay will be distributed to 34,449. blacks and spanish surnamed male productions and maintenance workers hired before 1968 to 5599 women employees and to minority and woman employees who retired from those jobs in the past two years, payments will range from $250. to $3000.

How the government can work such wonders for any workers except me is hypocritical. I maintain I was discriminated against for a longer period of time than any one of these employees mentioned above.

It was most encouraging for me to read the statement of Mr. Calson of the Watergate case. He said, "I did it because in my own heart I felt perhaps I could help protect other defendants against their individual rights being abused when they are defendants in trials. And what's going on in this Country now in terms of interfering with a defendants right to a fair trial has got to be stopped". I certainly hope this Court will abide by this statement to grant me a trial.

Another case that is before this Court at this time is the De Fumis case. Of course this case is most unlike mine. I am compelled to stand alone. De Fumis had two constitutional scholars prepare his case Mr. Philip Kurland and

Alexander Bickell. They stated "if the constitution prohibits exclusion of blacks and minorities on racial grounds. For it must be the exclusion on racial grounds which offends the Constitution and not the particular skin color of the person excluded".

In my case there were no Negroes applying for this position in Nevada. De Fumis was allowed to compete for the school. The De Fumis case does raise the all important question of just what does the Constitution mean by equal protection? Just as the 14th Amendment was used to strike down racial barriers does it also allow giving preference to racial minorities.

The judgment below (the Washington Supreme Court decision) should be reversed because it condones the use of a patently unconstitutional means to an invalid end. This is also true with the procedure ordered by Judge Wyzanski here in Boston to hire school teachers and police officers.

In another case the giant Standard Oil historic settlement of a case brought by the Labor Dept. to award two million back pay to 160 older employees the company illegally discharged between December 1970 and Dec. 31, 1973 because of their age also agreed to rehire 120 of those workers. The settlement made history because it was by far the largest ever made under the title known 1967 Discrimination in Employment Act.

In my case I was illegally issued a Reduction In Force. It could have been due to my age or strictly vindictiveness. Most certainly the cause of this complaint arose here in Boston. As in my case there were also fourteen bridge crane operators also illegally laid off.

I could go on and on citing cases of discrimination that were settled most advantageously to the injured parties. But if the Court refuses to read my petition I am as I

was since I became embroiled in this fiasco. But since I have been denied every job I sought in the Navy Dept. for over twenty years. I now try and fullfil my life's ambition I sought position outside the Navy.

I applied for a position as Work Release Supervisor for the Prisons in Boston and was declared ineligible. I sought the position of Energy Inspector with the Internal Revenue in Boston again I am declared ineligible. I appealed this decision and as of now I have heard nothing. Yet for me to take this case to Federal Court in Boston, what chance do I have?

Yet now if I try to seek private employment I am sure when vouchers are sent to the Head of the Shop I will receive a discriminatory recommendation. Therefore My life's ambition is denied me. My life is now without horizons. If this Court fails to issue the writ I am forever doomed to utter and complete failure.

Petitioner clearly was entitled as a matter of due process to have the validity of his case being dismissed appraised by the Court of Appeals, on consideration of the case as it was tried as a pretrial for lack of jurisdiction in the trial court. But the principle was violated by the Court below and this error which is of constitutional proportions was repeated and amplified in the Governments Brief in Opposition before this Court.

When the Appeals Court deliberately in spite of all the facts presented did uphold a atrocious decision by rendering a like atrocious decision leaves me spell bound. I am the only citizen in the entire Country that has never been granted a trial.

JOSEPH M. HOURIHAN,
Petition Pro Se.

Sec. 2012 Motion for leave to file out of time petition for rehearing of order denying certiorari.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1973

No. 73-1191

JOSEPH M. HOURIHAN, APPELLANT PRO SE

v.

HAROLD DAKIN, RESPONDENTS

Petitioner respectfully moves for leave to file the annexed petition for rehearing of the order of this court denying the petition for writ of certiorari in this case entered on April 15, 1974. No timely petition for rehearing was filed inasmuch as I, as a result of the harsh and unusual decision of this Court, denying my writ of certiorari rendered me physically and mentally unable to proceed even if I was aware of this procedure at that time. I was of the opinion Rule 58(4) was final.

I made a grave mistake in my Reply Brief in Opposition, that if corrected, will give substantial weight to my petition. On page 3, line 15, the word *not* should be inserted so that the sentence reads, It had not been sent air mail.

I believe the two printers named in the brief are guilty of conspiring to obstruct justice when they were to blame for the untimely denial of my appeal.

In accordance with 28 U.S.C. 452 I hereby submit the following facts to cause the writ of certiorari to issue.

In my motion filed with the District Court on June 4, 1973, page 4, paragraph 2, this is a case of fraud against

the government. In my motion of June 11, 1973 again I informed Judge Garrity if he denied me a trial the fraud would be a success. There is no denying the fact this case arose here in Boston. It follows Judge Garrity most certainly had jurisdiction over this case. Yet he chose to grant Mr. Gabriel's motion to dismiss my appeal for lack of jurisdiction. A grave miscarriage of justice when he permitted the fraud against the government to be a success.

In the Boston Globe, April 7, 1974—Mr. Gabriel is going to empanel in Boston to handle the cases being investigated by United States Atty. James Gabriel's special investigations unit on corruption in politics. Gabriel's current efforts are centered on the broad field of political wrong doing and already have had considerable success.

It is most unusual Mr. Gabriel has to look elsewhere for corruption when he has refused to carry out his official duties and permitted this fraud against the government to succeed, solely because the party concerned with the fraud is a friend of Senator Brooke's.

Mr. Gabriel caused my appeal to be denied by Judge Garrity because he insisted on making false statements to the court as did his assistant, Mr. Segal. As evidenced stated in his Motion to Dismiss Mr. Gabriel stated, "the complaint fails to state a claim upon which relief can be granted." Yet in Memorandum in Support of Defendants Motion to dismiss on Page 2, it states "Plaintiff seeks damages in excess of $10,000. Therefore Mr. Gabriel and Mr. Segal have made written statements to the court they are both fully aware are not true.

Therefore in accordance with Section 1001, of Title 18 of the U.S. Code it is a crime for a person to lie to any federal official. Mr. Gabriel and Mr. Segal had motives to lie therefore deliberately misled his fellow federal officials, then they both are in clear violation of Section 1001, of

Title 18 U.S. Code. This is a grave matter that this court should resolve even if my writ for certiorari was filed untimely. Because two wrongs will not make a right.

It is fact the defendants by a variety of deliberate actions discriminated against me by a variety of deliberate actions. If the rights of one are surpressed it is, in the final analysis the freedom of all which is jeopardized. Yet there was an article in the Boston Globe by Mike Barnicle, which stated, "Too few of us realize the fact that we live in a commonwealth blessed with leadership. In most states, the legislature is no more than an Eden of clowns filled with travelling salesmen and chautauqua hucksters who can't see the difference between a priority and a cheap political gain." "At a press conference last December Gabriel announced the formation of a special crime unit that was to span the state looking for corruption." This was obviously a very clever smoke screen because the Feds knew better than to tell the dirty movie people that the law was after them. If they did that, there could have been no cover up. "So, by lulling the lawbreakers into thinking the government was out cracking down on murders, crooked pols and white collar criminals Gabriel and his gang were able to bust up a ring of prostitutes and finally lay their hands on a print of "Deep Throat." Very clever this Gabriel.

It is a fact Mr. Gabriel was appointed to his position by Senator Brooke. I think if it was not the fact Senator Brooke is a defendant in my case I should have received a trial from Judge Garrity. The fact is I was treated in the Boston Courts most miserably.

There was however a case in Atlanta, Georgia a federal judge sharply lectured prosecutors yesterday for the treatment given one of two persons indicted in the kidnapping of Atlanta newspaper editor Reg Murphy.

U.S. District Court Judge Newell Edenfield said, "I understand they won't even let this man Williams, make a phone call . . . and he hasn't even got the money to buy a pack of cigarettes." In arising voice Edenfield shook his finger at the assistant U.S. Attorney and said, "We're dealing with a human being. This isn't any 15th century government you're dealing with."

Here is a judge that is insuring prisoners have their rights protected. What rights did I have? Had this Judge heard my case what would have been his reaction to the fact the U.S. Attorney had delibirately made a false statement to the Court. It was at the insistence of the U.S. Attorney and his assistant that was cause for Judge Garrity to dismiss my appeal. Although I don't think Judge Garrity needed much persuasion to deny my appeal.

In another case U.S. District Court Judge Walter Jay Skinner set aside the conviction of a 31 year old Roxbury man despite the fact that the state Supreme Judicial Court declined to hear the case. Skinner set aside the conviction of James Ross jr. now serving a 18 to 30 year sentence at Walpole state prison, for armed robbery because the trial Judge refused to ask the jurors whether they had any racial bias. Judge Skinner said Ross's trial in 1970 before Supreme Court Judge Edward F. Hennessey violated the constitutional rights of the defendant.

Although the jurors were asked in general whether they had any prejudice or bias Skinner said they should have been asked specially about racial prejudice.

There is definitely a controversy between this decision of Judge Skinner and Judge Garrity. Regardless of the cases I can mention each case the defendant is always granted a trial. I do believe I am the only citizen in the country that was never, granted a trial. The fact if I was a prisoner I then should have had my rights and I could have re-

ceived legal assistance. Why does Judge Skinner reopen this Ross case? How would I go about getting the District or the Court of Appeals to reconsider my case?

U.S. Attorney Beall for Maryland spoke at Fanuel Hall here in Boston he said, "Government was working and the wheels of justice were turning." Beall is the man who last year gathered the evidence that forced former Vice President Spiro Agnew to plead no contest to charges of tax evasion and to resign.

To maintain public rectitude Beall said, "The law must be a sword of Damocles that hangs not over the heads of the wrongdoers, but over the heads of those in the professions, business, industry and government who would condone misconduct by others."

"Each success in bringing wrongdoers to justice" he added "marks a victory for good government and we should not despair."

If he was the U.S. Attorney in Boston I do believe he would not have obstructed justice as did Mr. Gabriel. There is no doubt in my mind if Spiro Agnew had had his trial in Boston I feel sure he would have made out a lot better than he did.

Mr. Jaworski had summed up the same idea in another way. He said in his book on Nazi war crimes. "Apathy and indifference to a course of wrongdoing of political leaders and acquiescence in their evil practice can prove to be as helpful as active assistance."

I do believe the courts here in Boston are fully aware of the fact they are part of a conspiracy to continually and consistently deny me my civil rights. Because of the fact Senator Brooke did from a conspiracy with a Deputy Gundlach to deny my appeal for the position in Nevada they both were fully aware such reason was idiotic at best.

There was a most enlightening article in the Boston Globe by David Farrell on March 3, 1974. It seems there

are four more judges to be named to the Federal bench here in Boston. The two U.S. Senators Edward Kennedy and Edward W. Brooke are involved in the quiet low key controversy over who is to appoint the judges. Also fueling the dispute is the fact that during the past 18 months Brooke and the Republicans have named three judges to the court.

They are Judges Joseph L. Tauro, Frank H. Freedman and Walter Jay Skinner. All three played important roles in the success of the Republican Party in the Massachusetts in the 1960's.

As for Judge Tauro I stand on the facts I presented to the court to cause Judge Tauro to be removed from hearing my case filed with the court on May 21, 1973. This article does fully explain Judge Skinner's motives to try and free Ross.

Mr. Gabriel had stated in his memorandum that an extensive administrative review revealed no basis for plaintiff's complaint. This is yet another lie. As I told Judge Garrity when Mr. Segal made this same charge against me in court. Every decision rendered against me as a result of the administrative review was unjust, illegal, and most discriminatory. Anyone reading my appeal would have to realize a case of invidious discrimination.

I presented a Religious discrimination complaint that proves invidious discrimination. Judge Garrity told me all I had to do was to file a complaint and automatically the Navy Dept. would investigate my complaint. This is a wrong statement and I would think a Federal Judge would be aware of this. One must prove conclusively religious discrimination complaint before the Navy will accept it for investigation. I fail to understand why Judge Garrity had made such a statement.

The reception I first experienced when I tried to file my appeal with Mr. Peck at the District Court. I fully

realized I was in for an uphill fight. I tried to research how to get my case transferred to some other state, but I was unsuccessful. This was even before I was assigned Judge Tauro to my case.

Senator Brooke in a speech to business men in Boston had stated, "The right to work and profit in our system of enterprise is a right to be shared by all Americans and must be shared equally." I fail to understand how Senator Brooke can condone his actions in my case. But most certainly I have been denied my right to work. I was issued an Reduction in Force on April 26, 1974 and it was illegal because I was top man on the retention register. There was a conspiracy formed by a Mr. Hughes, Superintendent of Public Works Shops, to give my job to one of his fellow Masons. By some scheme this friend of Mr. Hughes is given some queer title and then he assumed control of my men. Some of these men I supervised for twenty years. My main mistake is naming Senator Brooke a defendant.

Another reason to cause me to seek the writ of certiorari is my right to work outside is now also denied me. I filed for a position of Work Release Supervisor for the Penal Institutions Boston, Mass. I received my notice I am ineligible as to experience. I filed for a Energy Inspector U.S. Internal Revenue, Boston, Mass., again I was rated ineligible. Both of these ineligible rates are as idiotic as the original ineligible rate. There is no way anyone can justify these ineligible rates.

When vouchers are sent to Mr. Hughes as to my experience either Mr. Hughes fills these vouchers out most discriminatory or else he causes someone else to fill them out discriminatory for him. I appealed the ineligible rate for the internal revenue position. If in the procedure the ineligible rate is upheld. What chance would I have to take my case to the District Court?

In my dealings with the Civil Service Commission in Boston, I was forced to endure invidious discrimination. The reason came to light just yesterday, in the Boston Globe it stated Attorney Harry Grossman of Boston was named yesterday as chief appeals officer for the Boston field office of the new Federal Employees Appeal Authority. There is no doubt in my mind but the reason I could never get anywhere with Mr. Grossman in my appeals is because Senator Brooke gave him this white elephant position. The ridiculous part of this article is they waited until all illegal RIF's were carried out in the federal installations before naming Mr. Grossman to this position. I don't think anyone myself included that went to Mr. Grossman when issued an RIF that was illegal that any corrective action was ever forth coming.

The decision of the Appeals Court is mind boggling. When the court cites the Gnotta case as a comparison this is not a true statement and I made the court aware of this fact many times. I did not file an administrative complaint as did Gnotta.

The fact is the Court did not have to waste time in stating anything about my charges whether true or not. The court lacked jurisdiction. This is a most baffling decision. To what court may I turn to for justice. For me to point out errors to the legal giants I think is reason alone to grant the writ. When the Court stated the complaint in this case contains nothing but the most conclusory of charges. This is a down right lie. I proved each and every defendant guilty as charged. When the notice continues such cannot suffice, even with the indulgence granted a pro se litigant. Again here I would state I was never granted any indulgence from this or the district court. I do not seek pity from this court. I only seek justice. My faith in our American system has been badly shattered

since I became embroiled in fiasco, unless the writ of certiorari is issued the inscription over the doors of this court will be a mockery to justice. The inscription should be changed to read justice for the few. This is my last chance to obtain justice. Two wrongs do not make a right and to deny my writ injustice to me for over twenty years shall have prevailed.

The fact I have been forced to stand alone in this mess, the fact I did finally succeed to get my writ to this court. I think I presented my case in a most exemplary manner. It will serve to all down trodden that without a high priced lawyer one can still obtain justice from at least this court.

Therefore I pray this Court to issue the writ of certiorari that I may still seek employment to fill my life's ambition. At my present state my life will forever remain a world without horizons.

Although this petition for rehearings is filed after the expiration of the time prescribed in Rule 58(2) the grounds upon it is based arose after such time. It also was impossible for me to comply with said rule. This court clearly has power in its discretion and in the interest of justice to entertain the petition in these circumstances.

Respectfully submitted,

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Appellant Pro Se.